

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION FOR )  
PERMIT NO 97-07380 IN THE NAME OF )  
THE IDAHO WATER RESOURCE BOARD )  
\_\_\_\_\_ )

**FINAL ORDER**

On October 22, 1997, the Idaho Water Resource Board ("Board" or "applicant") filed the above captioned application for permit with the Department of Water Resources ("Department") seeking to establish a minimum stream flow on Priest River tributary to Pend Oreille Lake. The application was filed pursuant to Chapter 15, Title 42, Idaho Code.

The Department provided notice of the application describing the proposed appropriation and setting the time and place for hearing on the application. Notice was published on July 30, 1998 and August 6, 1998, in the Bonner County Daily Bee, Sandpoint, Idaho, and on July 29, 1998 and August 5, 1998, in the Priest River Times, Priest River, Idaho.

On August 18, 1998, the Department conducted a public hearing in Priest River, Idaho for the purpose of eliciting testimony regarding the application. Parties appearing in a formal capacity at the hearing included Bill Graham for the Idaho Water Resource Board and Cindy Robertson for the Idaho Department of Fish and Game ("Fish and Game"). Steve Rosinski testified as a public witness in support of the proposed minimum streamflow.

On September 10, 1998, the hearing officer for the Idaho Department of Water Resources issued a Recommended Order in connection with the above captioned matter. None of the parties filed a petition for reconsideration, briefs or exceptions in connection with the Recommended Order. Based upon his understanding of the law and the facts in this matter, the Director makes the following Findings of Fact, Conclusions of Law and Final Order:

**FINDINGS OF FACT:**

1. Application for Permit No. 97-07380 seeks a minimum flow in the Priest River as follows:

- 1,500 cfs from April 1 to June 30
- 700 cfs from July 1 to July 31
- 300 cfs from August 1 to October 31
- 700 cfs from November 1 to March 31

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in a 21.7 mile reach beginning at the confluence of the Priest River with East River located in the SE1/4NE1/4 Section 28, T58N, R4W, B.M., Bonner County, downstream to the mouth of the Priest River located in the SW1/4NW1/4 Section 30, T56N, R4W, B.M. The purpose of the application is to protect fish and wildlife habitat, aquatic life and recreational values.

2. Exhibits offered and accepted as a part of the record include the following:
  - a. Applicant's Exhibit 1 - Priest River Fish Species, Priest River Fisheries Management, Priest River Fisheries and 1991 Priest River Temperature Study.
  - b. Applicant's Exhibit 2 - A report titled Instream Flow Regimens for Fish, Wildlife, Recreation and Related Environmental Resources by Donald L. Tennant, 1975.
  - c. Applicant's Exhibit 3 - A report titled Lower Priest River Instream Flow Study by Cindy Robertson, dated September 1992.
  - d. Applicant's Exhibit 4 - A Fish and Game Department report on Lake and Reservoir Investigations, Project F-53-R-9, Priest River Fisheries Study, by Richard A. Irizarry, dated May 1974.
  - e. Applicant's Exhibit 5 - Location map, Water Right Summary, Summary hydrograph, and Flow duration curves for Priest River near Priest River, Idaho.
  - f. Applicant's Exhibit 6 - An information sheet on the Priest River from a publication titled Idaho Whitewater.

3. The flow requested was primarily based on the Tennant Method which was derived based on a study conducted by Donald L. Tennant, a fisheries biologist employed by the U.S. Fish and Wildlife Service after analyzing several western streams. The study concludes that the percentage of average annual flow in a stream is related to the quality of the fish and aquatic habitat and the riparian health of the stream.

4. The minimum stream flows sought for the Priest River as measured approximately four (4) miles upstream from the mouth of the river are equaled or exceeded as shown below:

1,500 cfs from April 1 to June 30	- 90 % of the time,
700 cfs from July 1 to July 31	- 68 % of the time,
300 cfs from August 1 to October 31	- 72 % of the time,
700 cfs from November 1 to March 31	- 75 % of the time.

5. All rights acquired under Application for Permit No. 97-07380 are for instream non-consumptive use and are subject to all vested water rights, permits or applications for permit having a date of priority earlier than October 22, 1997.

6. Fish & Game testified that there are game fish in Priest River below Priest Lake including rainbow trout, cutthroat trout, brook trout, brown trout, bull trout, large mouth bass and mountain whitefish.

7. The parties supported the minimum stream flow application. There was no opposition to the approval of the application.

8. On January 12, 1996, the Department issued a final order denying a similar, but different, request to establish a minimum stream flow on the Priest River.

#### **CONCLUSIONS OF LAW:**

1. Chapter 15, Title 42, Idaho Code, provides that stream flow preservation for the protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, navigation and water quality, when made pursuant to this statute, is in the public interest and is declared to be a beneficial use of such water.

2. The proposed minimum stream flows will not interfere with any vested water right, permit, or application for permit having a priority date earlier than October 22, 1997.

3. The flow requested in the application is the minimum flow required to preserve the existing unique characteristics of the stream for the public benefit, and is not the ideal or most desirable flows which could be utilized for those purposes.

4. The proposed minimum stream flows are in the public, as opposed to private, interest.

5. The minimum stream flows proposed by the application are necessary to protect fish and wildlife habitat, aquatic life and recreational values.

6. The proposed minimum stream flows as approved in this order are generally capable of being maintained.

7. The Department should approve the application and should issue a permit.

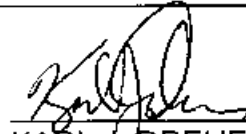
#### **ORDER:**

IT IS, THEREFORE, HEREBY ORDERED That Application for Permit No. 97-07380 in the name of the Idaho Water Resource Board is **APPROVED** subject to the following conditions and limitations:

1. Use of water under the permit is subject to all prior water rights.

2. Use of water under the permit shall be non-consumptive.
3. Upon the future finding and order of the Director that gaging stations are required to maintain the approved minimum stream flow, the right holder shall permanently install and maintain gaging stations as specified by the Department.
4. The Director retains jurisdiction, as described below, to review and amend any and all parameters of this right. The Board, upon receiving a request, or upon its own initiative, may petition the Director for an amendment to the right. The petition must set forth any significant change in circumstances and evidence of the public interest supporting the proposed amendment. The Director will notify the general public and specific persons or known interested parties of the proposed change, and conduct a hearing for the purpose of determining whether the right should be amended in the public interest. The burden of proof at the hearing shall be upon the persons or parties seeking the amendment to establish that the amendment of the right would be in the public interest.
5. The application hereby approved by the Director shall be submitted to the Idaho Legislature by the fifth day of the next regular legislative session and the Director's approval shall not become finally effective until approved by the legislature pursuant to provisions of Section 42-1503, Idaho Code.
6. This minimum stream flow is for the protection of fish and wildlife habitat, aquatic life and recreational values.
7. The river reach authorized for the minimum streamflow begins at the confluence of the Priest River with East River located in the SE1/4NE1/4 Section 28, T58N, R4W, B.M. downstream to the mouth of the Priest River located in the SW1/4NW1/4 Section 30, T56N, R4W, B.M.
8. Proof of instream beneficial use of the minimum flow appropriated shall be submitted in a manner approved by the Department on or before **September 1, 2003**.

Dated this 3<sup>rd</sup> day of December, 1998.

  
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KARL J. DREHER  
Director

State of Idaho  
Department of Water Resources

# Permit To Appropriate Water

NO. 97-07380

Proposed Priority: October 22, 1997 Maximum Diversion Rate: 1500.00 CFS

This is to certify, that STATE OF IDAHO  
IDAHO WATER RESOURCE BOARD  
STATEHOUSE  
BOISE ID 83720-0098

has applied for a permit to appropriate water from:  
PRIEST RIVER tributary of PEND OREILLE RIVER

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
MINIMUM INSTREAM FLOW	04/01 to 06/30	1500.00 CFS
MINIMUM INSTREAM FLOW	07/01 to 07/31	700.00 CFS
MINIMUM INSTREAM FLOW	08/01 to 10/31	300.00 CFS
MINIMUM INSTREAM FLOW	11/01 to 03/31	700.00 CFS
	Totals	1500.00 CFS

LOCATION OF POINT(S) OF DIVERSION:

Beginning of Stream Flow Reach  
End of Stream Flow Reach

NESENE , Sec. 28, Township 58N, Range 04W  
SWNW , Sec. 30, Township 56N, Range 04W  
BONNER County

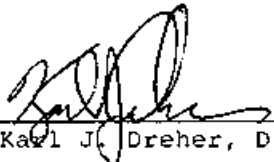
PLACE OF USE: See Remarks

CONDITIONS OF APPROVAL AND REMARKS

1. See Final Order for conditions and limitations for use of water under this approval.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code.  
Witness the signature of the Director, affixed at Boise, this

3<sup>rd</sup> day of December, 1998.

  
Karl J. Dreher, Director